IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

ELLOYD JOHNSON §

VS. § CIVIL ACTION NO. 9:18-CV-158

TDCJ HEALTH SERVICES DIVISION, § ET AL.

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Elloyd Johnson, a prisoner confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against the TDCJ Health Services Division and Anitra Lindley. Plaintiff requested leave to proceed *in forma pauperis*.

The Court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends denying plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g) and dismissing the action unless plaintiff paid the \$400 filing fee within fourteen days after the Report and Recommendation was entered.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. Plaintiff contends that he is not subject to the "three strikes" bar of

§ 1915(g). This claim lacks merit because plaintiff has clearly accumulated three strikes. Johnson

v. Thaler, 541 F. App'x 179, 480 (5th Cir. 2013) (imposing sanction bar after noting that plaintiff

had accumulated three strikes). Plaintiff has not demonstrated that he is in imminent danger of

serious physical injury. Therefore, the action should be dismissed without prejudice.

ORDER

Accordingly, plaintiff's objections (document no. 5) are **OVERRULED**. The findings of

fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate

Judge (document no. 3) is **ADOPTED**. A final judgment will be entered in this case in accordance

with the Magistrate Judge's recommendations.

So ORDERED and SIGNED January 7, 2019.

Ron Clark, Senior District Judge

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